Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

In RE: DEPENDENCY JOSIAH BEARDSLEE,
child of tender years,
DOB: 08/16/89.

ON PETITION FOR A WRIT OF HABEAS CORPUS TO WASHINGTON STATE SUPREME COURT

EXTRAORDINARY WRIT OF HABEAS CORPUS

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50 pp

QUESTION PRESENTED

Josiah Beardslee, a child of tender years was removed from the home of his maternal uncle, Dr. Terry Beardslee, without cause by WA-DSHS. Dr. Beardslee was raising him as his own son and has in loco parentis status. This denies the fundamental rights of freedom, companionship, care and custody of family. WA-DSHS refused to act in Josiah's best interest and removed him to the physical possession of Virginia-Henrico DSS, where he remains in fostercare. No communication has been allowed, however, reports describe how Josiah's estrangement from family has caused, "aggressive, out of control and inappropriate behavior," clearly detrimental to his best interest. The trial court proceedings were appealed and the appellate system has failed, including but not limited to Writs of Habeas Corpus and Certiorari. The courts have refused to address Josiah's fundamental rights and the undeniable importance of acting swiftly in the best interest of an infant.

The decisions present the following question:

1. Whether, pursuant Roe v.Wade, when fundamental rights are involved, state interference may be justified only by a compelling state interest and such interference must stem from legislative enactments narrowly drawn to express only the legitimate state interest involved.This Court says it is and is of public importance. Contrarily, the two states made agreements between themselves, interfered with Josiah and Dr. Beardslee, without cause and without benefit of due process of the fourteen amendment, and in so doing, abridged the fundamental rights between natural family members which has been determined guaranteed in the fourteenth amendment as a right and removed Josiah to a jurisdiction outside of Washington; and, having refused to address the illegal restraint of Dr. Beardslee's child, claimed the resolve is moot without ability to produce his child, and which so requires Josiah's immediate release and return of his custody and person to his maternal uncle, Dr. Beardslee, who stands in loco parentis, and so requiring an Extraordinary Writ of Habeas Corpus to be granted by the U.S. Supreme Court.

PARTIES TO THE PROCEEDING

This petition is brought on the behalf of Josiah Beardslee a child of tender years by Dr.Terry Beardslee his, maternal uncle who having raised Josiah since his birth, has provided companionship, shelter, medical and general care, prior to his removal from his home on May 25, 1995.

Defendant is Washington State Dept. Social and Health Services (WA-DSHS) represented through and by attorney Dale T.Wagner assistant attorney to state attorney general of Washington, Christine O.Gregoire.

TABLE OF CONTENTS

QUESTION PRESENTED.....i
PARTIES TO THE PROCEEDINGS.....ii
TABLE OF AUTHORITIES.....v
OPINIONS BELOW.....1
JURISDICTION.....1-3
STATUTORY PROVISIONS.....3
STATEMENT OF THE CASE.....4-6
REASONS FOR GRANTING THE PETITION.....7-15
CONCLUSION.....16

APPENDIX

1. July 21, 1997 order of the Court of Appeals State of Washington.....1a-2a

2. October 9, 1997 0rder Supreme Court of Washington.....3a

3. September 27,1993 Circuit Court Richmond City Virginia Custody order.....4a

4. October 13, 1993 Circuit Court Richmond City Virginia visitation order 5a

5. November 15 nunc pro tunc November 8, 1993 Circuit Court Richmond City Virginia removal order.....6a-7a

6. May 30, 1995 Circuit Court Richmond City Virginia modification custody/pickup order.....8a-9a

7. November 4, 1996 Superior Court of Washington order denying intervention and dismissal proceeding.....10a-11a

8. March 12, 1997 Superior Court 0f Washington order objection report of the proceedings.....12a-13a

9. January 29, 1997 Circuit Court Richmond City Virginia order 14a-16a

10. June 7, 1996 Rule to Show Cause.....17a

11. October 31, 1996 Superior Court of Washington Notice Objection Ruling entered Nov 4, 1996 .....18a

12. June 2, 1995 Emergency Physical Exam by WA-DSS NORTHWEST PEDIATRICS 19a

13.June 6, 1995 Washington State Division of Children and Family Services(DCFS) evaluation.....20a

14. October 27, 1993 letter of Cowan & Owen to Court re: November 8, 1993 hearing 21a

15. October 27, 1993 Motion to Show Cause of visitation brought by Cowan & Owen.....22-23a

16. United States Constitution Fourteenth Amendment Section 1.....24a

TABLE OF AUTHORITIES

CASES **Page**

Burton v. Russell
57 S.E. 2d 95, 190 Va. 339(1950).....8

Buchanan v. Buchanan
197, S.E. 426, 170 Va. 458(1938).....8

Culpepper v. Snohomish
59 wn App 166, 796 P.2d 85(1990).....6

Dependency of H.
71 Wn App 524, 859 P.2d 1258(1993).....2,3

Indiana Dept of Public Welfare v. Payne Ind
622 N.E. 2d 461(1993).....3

In Garvin v. Garvin 260
Iowa 1082, 152 N.W. 2d 206.(1967).....10

In re Dependency M.R.,
899 P2d 1286 (1995).....2

In re Green,
132 N.W. 2d 380(1965).....2

In re Hansen,
24 Wn. App. 27, 599 P.2d 1304 (1979).....7,10

In re Logg,
74 Wn. App. 781 , 786, 875 P.2d 647 (1994).....12

In re Marriage of Kastanas,
78 Wn. App. 193, 896 P.2d 726 (1995).....12

In re Payne,
79 Wn. App. 43, 899 P2d 1318(1995) 12

In re Schreifels v. Schreifels,
47 Wn.2d 409, 287 P.2d 1001 (1955).....7

In re Thorensen,
46 Wn. App. 493, 730 P.2d 1380 (1987).....12

In re Welfare of Key,
119 Wn.2d 600, 836 P.2d 200, (1992).....11

Mahoney v. Shinapoch
107 wn 2d 679, 689, 732 p2d 510 (1987).....12a

Martin v. Pittsylvania County Dept. Social Services;
3 Va app. 15, 348 S.E. 2d 13 (1986).....11

May v. Anderson
345 U.S. 528, 97 L.Ed 1221(1953).....7, 13

Osborn v. Osborn,
60 Wn. 2d 163, 372 P2d 538 (1962.).....12

People v. Walts
25 N.E. 266, 122 N.Y. 238(1890).....7

Puchner v. Krozicki
E.D. Wis 1996, 918 F. Supp 1271.....3

Pukas v. Pukas,
42 S.E. 2d 1, 129, W.Va. 765 (1947).....8

Rader v. Montgomery County Dept of Social Services,
5 Va. app. 523, 365 S.E. 2d 234 (1988).....11

Roe v. Wade,
410 U.S. 113, 155, 35 (1973)..... i

Scannell v. State ,
128,Wn 2d 829, 912 P. 2d 489 (1996) 6

Scott v. Goldman,
82 Wn. App. 1, 917 P.2d 131 (1996).....13

Sherman v. State,
128 Wn.2d 164, 905 P.2d 355 (1995).....9

Stanley v. Illinois
405 U.S. 645, 651 (1972).....2, 11

State v. Bastas,
75 Wn App 882, 880, P. 2d 1035 (1994).....2

State v. Waleczek,
90 Wn.2d 746, 585 P.2d 797 (1978).....10

Trimble v. State Kan,
D. Kan , 927 F. Supp 401, (1996).....3

U.S. ex rel Cobell v. Cobell
421 U.S. 999, 503 F.2d 790.(1974).....3

Woods v. Burton, 8 Wn. App. 13, 503 P.2d 1079
(1972).....2

Young v. Minton ,
D.C. Ky., 344 F. Supp 423 (1972)..... 2

STATUTES AND RULES

28 U.S.C. 1738f(d).....12

28 U.S.C. 2254(b) 3

RAP 9.3 5

RAP 16.3(a).....5

RCW 2.32.180.....9

RCW 7.36.140.....5,6

RCW 7.36.020.....5

RCW 13.34.020.....14

RCW 13.34.055(1).....8

RCW 13.34.060(1).....8,9

RCW13.34.060(2).....9

RCW 13.34.060(8).....9,11

RCW 13.34.090.....9

RCW 26.10.030(1).....10

Supreme Court Rule 20.....1

U.S. Constitutional Fourteenth amendment.....i,2,3,16

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner petitions for an issuance by the Court for the relief sought from the Extraordinary Writ of Habeas Corpus.

OPINION BELOW

On 6/5/95, Josiah was removed from his home in Washington to Virginia without an order entered. The Washington trial court entered an order on 11/4/96 without facts, findings or conclusions of law see Appendix ("App.") 10a. The Washington appellate court's opinions are noted on app. 1a-3a.

JURISDICTION

The Washington trial court entered an order on 11/4/96. The court of appeal's opinion was entered 7/21/97, (App.1-2a.) A timely petition for discretionary review, writ of certiorari and accelerated review were filed on 8/5/97 and all denied in the Washington Supreme Court. Motions to modify timely for discretionary review and the writ of certiorari were unanimously denied on 10/9/97 by a panel of five judges including the chief judge, in the Washington Supreme Court, (App.3a.)

The United States Supreme Court's jurisdiction is invoked under Supreme Court Rule 20.4 (a). Proceedings on habeas corpus involving a child are addressed to the equity power of the court and are governed, not so much by considerations of strictly legal rights as by those of expediency and equity and above all the welfare and interest of the infant.The court is not bound by,

and should not give effect to, technical rules of practice, but should determine the case on the merits. In re Green, 132 N.W 2d 380(1965), Young v. Minton , D.C. Ky., 344 F. Supp 423 (1972). Speedy justice is critical in juvenile proceeding. The supreme court shall promulgate any necessary rules to effectuate the purposes. State v. Bastas, 75 Wn App. 882, 880, P. 2d 1035(1994). The language and intent of JuCR 2.2(a) and RCW 13.34.060 provide for release of a child when shelter care is without court order and no dependency petition is filed within 72 hours of custody. Dependency of H. 71 Wn App. 524, 859 P.2d 1258 (1993).

Any discussion of an action for custody must begin with a recognition that the parent-child relationship is a fundamental liberty under the due process clause of the 14th amendment of the U. S. Constitution that cannot be abridged by State action. Stanley v. Illinois 405 U.S. 645, 651 (1972).

In response to the writ of habeas corpus, the state has laid claim the application seeks an impossible remedy to the state's improper action, process, removal, and placement to another state, as Josiah is not within the Department's direct authority and no longer within the court's jurisdiction. The state makes claim the issue is moot. Such a claim is of great import to the public, because a precedent would occur where states can remove a child from his home without cause , without due process and without opportunity to return, denying the fundamental right to raise their families. This cannot be in the best interest of the child or the public interest at large. On October 9, 1997, the Washington Supreme Court disagrees with the U.S. Supreme Court, finding such rights frivilous.

A shelter-care hearing conducted under RCW 13.34.060 in child dependency proceedings is subject to appellate review. A controversy implicating due process rights is sufficiently infused with public interest to warrant review even if moot. Dependency H, 71 Wn App. 524, 859 P.2d 1258. (1993).

However, the release of an infant from illegal restraint may not render a habeas corpus proceeding moot where an issue of great public interest is raised. U.S. ex rel Cobell v. Cobell 421 U.S. 999, 44 L.Ed.2d 666.(1974)

Petitioner "exhausted" state court remedies as required to bring habeas corpus proceedings where highest court was afforded fair opportunity to rule on factual and theretical substance of petitioner's claims and therefore no state remedy was available to him. Puchner v. Krozicki E.D. Wis, 918 F. Supp 1271 (1996).

Even so, a habeas petitioner need not exhaust state remedies where circumstances render state remedies ineffective. Trimble v. State Kan, D. Kan , 927 F. Supp 401, (1996).

U.S. Supreme Court decisions pertaining to federal questions are binding on State courts, lower Federal court decisions may be persuasive but have nonbinding authority on state courts. Indiana Dept.of Public Welfare v. Payne Ind.622 N.E. 2d 461(1993).

The above makes for exceptional circumstances warranting the exercise of the Court's discretionary powers as in 28 U.S.C.ξ 2254(b).

STATUTORY PROVISIONS

The Fourteenth amendment of the United States Constitution Sec one are reproduced in Appendix page 24a.

STATEMENT OF THE CASE

On May 25, 1995, the police arrived at the domicile of Dr. Terry Beardslee and Josiah Beardslee, both residents of Washington. Josiah was removed from Dr. Beardslee's home in Washington without cause where his uncle had physical custody and was raising him from infancy. Josiah's mother had been arrested earlier and was not present when the police required Josiah to leave his parental home of his uncle.The police contacted WA-DSHS who placed Josiah in a shelter care . The WA-DSHS proposed the mother had abducted Josiah against a legal order in Virginia and that Josiah was now without a parent, refusing to recognize Dr. Beardslee, and scheduled a tentative hearing in regard to the welfare of Josiah without filing any notice, petition, etc. failing to trigger a cause number. The judge failed to recuse himself having admitted to being privy to the facts pertaining to the natural mother a week prior. Dr. Beardslee's attorney, having contacted the clerk's office, finding a hearing was going forward, despite the above, motioned in open court on May 30, 1995, which was denied. Neither natural parent had the child and Dr. Beardslee required continuing custody. No court reporter nor other official was present. No video camera recorded the hearings.

The May 30, 1995 hearing was continued until June 5, 1995 with Josiah remaining in shelter care without any continuation order or further consideration for release to Dr. Beardslee, the appropriate person. The judge failed to enter his findings: no notice was given nor filed by WA-DSHS. On June 6, 1995, the court disallowed Dr. Beardslee to appear on his own behalf by attorney or otherwise.

Va-Henrico DSS presented through and by WA-DSHS, on June 5, 995; the May 30, 1995 pickup order and the November 15, 1993 rder certified from Virginia without proof of process. The Washington trial court determined from these orders alone, notice ad been given to the parties and a custody proceeding was still in rogress in Virginia. Washington declined jurisdiction and ordered he matter dismissed. No court order was entered on June 5, 1995, et WA-DSHS removed Josiah to VA-Henrico 3, 000 miles from WA.

On November 4, 1996, the order from Dr. Beardslee's motion to compel entry, stated, "notice is given to all parties," referring to the November 15, 1993 Virginia removal order, and the May 30, 1995 Virginia pick-up orders, however, the claim is false as the record upon entry of the order shows due process lacking as supported by the order itself.

Any and all communication has been barred. The writ was set aside in the Washington Court of Appeals, [1,2,3,4,5] and upon a writ of

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[1]RAP 16.3(a). Rules 16.3-16.5 establish a single procedure or original proceedings in the appellate court to obtain relief formerly available by petition writ of habeas or by post-conviction relief.

[2] Chapter 7.36 was not amended in regard to RCW 7.36.020 or RCW 7.36.140. The statute is not superseded in RAP 18.22 Washington Practice Vol 13, Rules Practice 4th Ed.

[3]RCW 7.36.020 Writs of habeas corpus in favor of parents, guardians, limited guardian where appropriate, spouses, and next of kin, and to enforce the rights, for the protection of infants and incompetent or disable persons ; and the proceedings shall in all cases conform to this chapter.

[4]It is incumbent upon the Court of Appeals to consider and to determine federal questions presented to it by a writ of habeas corpus even though RCW 7.36.140 affirmatively states such a duty with respect to the Supreme Court only.

[5]RAP 9.3 The party seeking review may prepare a narrative report of the proceedings if either the court reporter's notes or videotape of the proceedings

certiorari, determined frivolous in the Supreme Court of Washington, necessitating extraordinary writ to be issued, with relief within requested from the United States Supreme Court.[6,7,8,9]

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[6] RCW 736.140 The consideration of any petition for a writ of habeas corpus by the supreme court or the court of appeals, whether in an original proceeding or upon an appeal, if any federal question shall be presented by the pleadings, it shall be the duty of the supreme court to determine in its opinion whether or not the petitioner has been denied a right guaranteed by the Constitution of the United States.

[7] If the court states the petition is in the wrong court, to prevent gross miscarriages of justice, may be satisfied by a pro se party who may have understandably and innocently misinterpreted an amended court rule and complies with its preamendment provisions. Scannell v. State 128, Wn 2d 829, 912 P. 2d 489 (1996).

[8] A court rule should not be applied in a hypertechnical manner that has no effect other than to deny plaintiffs their day in court. Culpepper v. Snohomish 59 wn App. 166, 796 P. 2d 1285 (1990).

[9] All child welfare proceedings should be exercised to promote the best interest of the child In re Dependency of M.R. 899 P2d 286 (1995).

REASONS FOR GRANTING THE WRIT

Josiah, a child of tender years, is being held illegally from his liberty and special circumstances shown onto the court warrant his release back to his maternal uncle. The use of the writ is warranted on the ground that absence from legal custody is equivalent to illegal restraint. People v. Walts 25 N.E. 266, 122 N.Y. 238.(1890)

Any person who shows himself to have a legal right to custody of an infant may maintain habeas corpus proceedings to obtain it. The office of a writ of habeas corpus in cases involving the custody of children is not to recover their possession but to free them from illegal restraints upon their liberty, the detention of a child of tender years from one entitled to its custody, being an illegal restraint within the law. Habeas corpus lies where the judgment or order is void as for denial of due process or want of jurisdiction . In re Schreifels v. Schreifels, 47 Wn.2d 409, 287 P.2d 1001 (1955).

Due process considerations require that parties in the relation of in loco parentis to a child be given a full and meaningful opportunity to present evidence at a dependency hearing to determine whether the child is a dependent child. In re Hansen, 24 Wn. App. 27, 599 P.2d 1304 (1979).

In other aspects, the writ is ordinarily a means for investigating and determining which of the parties has the right to immediate possession of a child. May v. Anderson 345 U.S. 528, 97 L.Ed 1221.(1953)

In proceedings on a writ of habeas corpus, while the court is bound to free the child from illegal restraint, the court in addition to relieving him from restraint will make a choice for him and award his custody to the proper person. Buchanan v. Buchanan, 197, S.E. 426, 170 VA 458. (1938)

In a case of abuse of discretion, the determination of the court shall not be sustained. Trial court abused its discretion in granting father custody of child in habeas corpus proceeding against third persons in view of lack of interest shown the child by the father. Burton v. Russell 57 S.E. 2d 95, 190 Va. 339.(1950). The exercise of discretion is subject to review but the reviewing court will not interfere with the judgment of the court unless it is clearly against the weight of evidence or the court's discretion appears to have been abused. Pukas v. Pukas 42 S.E. 2d 1, 129, W.Va. 765. (1947)

The merits of the case show unto the court the following:

On 5/24/95, the local police department removed Josiah without cause from Dr. Beardslee's home in Washington, where his uncle was raising him. Dr. Beardslee was not charged or arrested.

The officer should not have removed Josiah, who should have been allowed to remain in his parental home of his uncle, according to RCW 13.34.055,[1] however, the officer placed him in shelter care.

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[1]RCW 13.34.055(1) If there is no person or agency having the right to physical custody available to the child, the officer may place the child in shelter care as provided in RCW 13.34.060

According to RCW 13.34.060(1) [2] a hearing must commence within 72 hours if a child is placed in shelter care. Tentatively, WA-DSHS scheduled a hearing on 5/30/95 without filing notice or petition in violation of RCW 13.34.060(2).

The judge requiring a hearing did not enter findings [4] nor recuse himself from these civil proceedings, despite his part in a hearing the prior week which dealt with criminal allegations of Josiah and his natural mother. Judges should disqualify themselves in a proceeding in which their impartiality might be questioned. Sherman v. State, 128 Wn.2d 164, 905 P.2d 355 (1995). Dr. Beardslee was not allowed to be a part of the dependency proceeding. The uncle's petition for custody and his natural guardianship were denied, nor was his in loco parentis recognized, which does not apply the view designed to maintain family structure.[5] See app.10a-11a order entered 11/4/96. No court reporter, other official, or videotape was present.[6]

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2 RCW 13.34.060(1) No child may be held longer 72 hours after taken into custody unless a court order has been entered for continued shelter care.

3 RCW 13.34.060(2) Upon receipt of notice , the parent , guardian, or legal custodian shall sign receipt prepared by CPS. The receipt shall be made a part of the court's file in the dependency action.

4 RCW 13.34.060(8)(b)(iii) The court shall enter a finding as to whether subsection (2) has been complied with.

5 RCW 13.34.090 states: Any party(in loco parentis) has a right to be represented by an attorney of his or her own choosing in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder. In re Hansen, 24 Wn. App. 27, 599 P.2d 1304 (1979).

6 RCW 2.32.180 states such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington.

Dr. Beardslee has a legal right to the child and the proceedings when neither natural parent has the child RCW 26.10.030(1) and so filed a custody petition.[7] Dr. Beardslee, the maternal uncle, who stood in loco parentis, whether a person is a guardian within the meaning of the statute depends on the particular facts and circumstances and will include any person who even for a short time stands in loco parentis, i.e., assumes duties normally characterized as parental. State v. Waleczek, 90 Wn.2d 746, 585 P.2d 797 (1978); the right of one in loco parentis status to present evidence, not allowing such violates due process In re Hansen, 24 Wn. App. 27, 599 P.2d 1304 (1979).

While Josiah was under his uncle's care, the uncle secured and paid for a surgeon whose speciality in reconstruction and plastic surgery was required to excise the threatening arteriovenous malformation on Josiah's buttock. The surgery saved his physical life.

Habeas corpus proceeding return to aunt and uncle after being forcibly removed from their custody. Nonparent had occupied a loco parentis position for such a time to become the true parent by association. In Garvin v. Garvin 260 Iowa 1082, 152 N.W. 2d 206.(1967).

The court did not release Josiah, rather kept him in shelter care on 5/30/95 until 6/5/95 without benefit of petition or continuation order; whereupon, the trial court lost jurisdiction of the case after 5/30/95. Dr. Beardslee has not come before the trial court since 5/30/95, yet has entered objections appropriately and timely prior to subsequent hearings called by WA-DSHS. Further, the court did not enter an order on 6/5/95, yet Josiah is placed in Virginia.

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[7] RCW 26.10.030(1) a person other than a parent by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents.

RCW 13.34.060 (8) provides: shall order continuance if the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The error mandates reversal, return of Josiah to Dr. Beardslee, because dependency was never established. Dependency of H., see previous.

The record is clear, see app. 15a, despite the knowledge of the whereabouts of the custodial family, the May 30, 1995 order, entitled pick-up order, which modified custody, is without notice and proper service. Stanley v. Illinois 405 U.S. 645, 651 (1972).

Due process requires the trial court's strict compliance with the statutory scheme for disposition of child custody cases. Rader v. Montgomery County Dept of Social Services, 5 Va. app. 523, 365 S.E. 2d 234 (1988). Where a natural parent is not given specific notice by petition seeking specific placement and where substantial parental rights are at stake, a trial court has no jurisdiction to enter sus sponte an order terminating or reducing those parental rights. Martin v. Pittsylvania County Dep[illegible]ocial Services; 3 Va app. 15, 348 S.E. 2d 13 (1986).

Further, the elements of the constitutional guaranty of due process in its procedural aspects are notice and opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case; also, to have the assistance of counsel, if desired, and reasonable time for preparation for trial. In re Myricks, 85 Wn.2d 252 , 254, 533 P.2d 841 (1975); In re Messmer, 52 Wn.2d 510, 514, 326P.2d 1004 (1958). In re Welfare of Key, 119 Wn.2d 600, 836 P.2d 200, (1992).

Due process was not invoked by Washington-DSHS by all counts for the party of Terry Beardslee, Josiah's Uncle.

For purposes of 28 U.S.C. SS 1738A(d), which is a portion of the Parental Kidnapping Prevention Act of 1980 that provides for a state's jurisdiction to continue after having made a custody determination consistently with the act, a determination is not "consistent" if there is no compliance with the notice provisions of 28 U.S.C. SS 1738A(e). Previously, the Washington Court of Appeals determined that ex parte orders wiped out the existence of simultaneous proceedings or continuing jurisdiction. In re Thorensen, 46 Wn. App. 493, 730 P.2d 1380 (1987).

Questions of jurisdiction arising in interstate custody matters must first be decided by reference to the PKPA In re Marriage of Kastanas, 78 Wn. App. 193, 896 P.2d 726 (1995).

The record is clear the natural mother as custodian left Virginia with her son prior to any order filed or entered November 15, 1993 and states to live with her brother domiciled in the state of Washington. See app., 15a. In any case, the order of 5/30/95 modifies custody when the whereabouts are known again without due process. The office of an order or decree nunc pro tunc is to record judicial action taken and not to remedy inaction. Bruce v. Bruce, 48 Wn 2d 635, 296 P. 2d 310. Osborn v. Osborn, 60 Wn. 2d 163, 372 P2d 538 (1962.) See App.8a & 15a.

As there is no notice or petition, the trial court erred to conclude an on going custody proceeding regarding Josiah in the State of Virginia cited in re Payne, 79 Wn. App. 43, 899 P2d 1318(1995)

First and basic to any litigation is jurisdiction. First and basic to jurisdiction is service of process. In re Logg, 74 Wn. App. 781 , 786, 875 P.2d 647 (1994) (quoting Painter v. Olney, 37 Wn. App. 424, 427, 680 P.2d 1066, review denied, 102 Wn.2d 1002 (1984)).

A foreign judgment is not binding if it is made to appear that it was rendered without jurisdiction over the person sought to be bound. May v. Anderson Ohio, 73 S. Ct 840, 345 U.S. 528, 97 L. Ed 1221.(1958)

Upon conclusion of the 6/5/95 hearing, Henrico-DSS through WA-DSHS, presented the claim to the court that VA-DSS were entitled to custody for placement with the Nollers, foster family in Virginia rather than the maternal uncle, Dr. Beardslee. Josiah was found to be in good health and well taken care of by his uncle, see app. 19a-20a

Upon review of May 30, 1995 pick-up order, the court did not consider Josiah's best interests in that he was removed from his uncle, and in that its opinion that there was a valid order with notice to the parties with proper due process. Josiah was required continued with social services which removed Josiah to be placed in the state of Virginia. The court abused its nondiscretionary duty to vacate void judgments Scott v. Goldman, 82 Wn. App. 1, 917 P.2d 131 (1996). see app.10a, 11/4/96 WA order.

Burden is on the Dept. to establish compliance as there is nothing in the statutory scheme which removes the burden on the Dept. Social Services to establish compliance with the statutes, which places the burden on the parents to protect their interests; or which operates as a waiver of their rights. To the contrary, due process prohibits such procedure. Rader v. Montgomery County DSS, 5 Va. App. 523, 365 S.E. 2d 234(1988)

Social Services have never satisfied this burden of required proof of compliance with the fourteenth amendment.

Because the situation happened, after Josiah's removal, he was without natural family in Virginia, the father's whereabouts unknown; although Dr. Beardslee made himself available, Josiah was placed in the state home of Noller, where he did poorly, remained only briefly due to Noller's insistence Josiah leave and be placed elsewhere. Josiah was then placed in an emergency setting. Consequently, Josiah has been needlessly placed in different foster care homes. The natural father was located by capias for violation of a burglary felony conviction. Six months after Josiah's arrival, he filed a petition and withdrew it.

Dr. Beardslee's continuing care and concern for his nephew, he tried to visit Josiah, retaining an attorney. In response to this interest, Va-Henrico DSS denied visitation, concerning allegations unrelated to him, insisting a rule to show cause for contempt of the November 15, 1993 order See App 16a & 17a.

A person can not be punished for contempt for disobedience or resistance to a decree when he was not a party, had no knowledge of its existence, or where the decree appointing contained no direction, mandate, or prohibition to or against him. Kidd v. Va. Safe Deposit & Trust Corp.; French v. Pobst 203 Va. 704, 127 S.E. 2d 137(1962) Meantime, in the State of Washington, Dr. Beardslee is found to be innocent of this charge.

On August 20, 1996, Leedom withdrew any representation and the matter of custody from Virginia. Dr. Beardslee compelled an order in Washington addressing the issue of removal and failure to continue custody with the uncle.

Washington RCW 13.34.020: Legislative declaration of family unit as resource to be nurtured. The legislature declares that the family unit is fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized.

If legitimate state interest ever existed, its interests had been met in Washington. Josiah's removal to a strange environment with a foster family precipitated deterioration of his well being which would have been avoided had the legal rights of the uncle, where Josiah's basic condition for nurture, health and safety were intact, not been overridden.

The state continues to override its narrowly defined interest as it denies the fundamental right to raise one's own family. Regardless of the difficulties of the parents, the maternal uncle's loving relationship with Josiah, his availability, firm continuing interest and custody is paramount to Josiah's welfare.

In conclusion, social services' determination, Dr. Beardslee's care and custody of Josiah is paramount. On June 2, 1995, see App. 19a, under his uncle's authority, Josiah was determined to be a healthy child, appropriately cared for, in whose home, the child was without any risk for mental, physical or social developmental problems, yet without his uncle, in Virginia, see app.15a , states Josiah without warning, has precipitated immediately, upon his removal, displaying aggressive, out of control, inappropriate behavior to all. The reality is that if he is not placed with Dr. Beardslee now, he may become a ward of a mental or correctional facility and for the remainder of his life.

Should the states of this America be allowed to come before the people of these United States encroaches on the very fiber of American democratic fundamental rights secured in the constitution to prevent the very destruction of the public fundamental right to family if not defended by those entrusted to keep the rights of the family secured.

The results are clear if one looks at this case and multiplies it by the millions of children, the cost to our society as a whole as the family values unit is destroyed by the self interest of a monarchy, being the state, who would be king. The precedence is dangerous indeed if allowed to stand and does away with the fourteenth amendment as written, intended and previously interpreted.

CONCLUSION

WHEREFORE, Chief Judge or and all Justices, for the legal authorities presented and stated within supports prima faciae on the record that Josiah is being held in illegal restraint of his liberty against void orders needed to be vacated and so requires his release upon which being an infant requires further consideration,

THEREFORE, pray for good cause shown and to attain the ends of justice to vacate void orders, requiring the immediate release of Josiah Beardslee from social services who illegally possesses him and in his best interest, to return him to the custody and care of his maternal uncle Dr. Beardslee to Blaine, Washington by U.S. Marshal. The principle to raise one's children is fundamental, any proceeding by the state to deprive a person of that right must take place under the Fourteenth amendment. The right of the family is to be preserved included within those bundle of privileges of the United States; that no States hall deprive any person of their life, liberty, or property without due process of law.

Respectfully request the writ to be granted:

DATED:
12/9/97

Terry R. Beardslee, D.V.M., Pro Se
In loco Parentis/ Guardian
P.O. Box 4770
Blaine, Washington 98231
(360) 332-8303

APPENDIX

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON DIVISION ONE

IN RE THE DEPENDENCY OF:

Josiah Beardslee DOB 08-16-89 A Minor Child State of Washington Department of Social and Health Services Respondent, v. Susan Beardslee & Terry R. Beardslee Appellants	No. 39742-7-1 ORDER

Terry Beardslee has filed a motion to modify a ruling entered April 21, 1995, by Commissioner Kallas, a request for a Writ of Habeas Corpus, a motion to accelerate review, motion to transfer the habeas corpus to the Supreme Court. A panel has considered the various motions in conjunction with the motions to modify and resolves them as follows.

The motion to modify Commissioner Kallas' ruling is denied. Beardslee is required to comply with the trial court's order regarding the preparation of a report of the proceedings. Because of the extensive delay caused by Beardslee's refusal to provide such a report, the appeal shall be dismissed without further notice or hearing if the [sic] reports of the proceedings is not filed in this Court by August 29, 1997.

The request for a Writ of Habeas Corpus is placed in the file without action , that an original action seeking a writ of habeas corpus in the first instance in the appellate courts is governed by Title 16 of the Rules of Appellate Procedure. RAP 16.3(a). Such a petition may only be filed by " the person who is under restraint or in the person's name by that person's guardian, conservator, parent or attorney". RAP 16.6(a)Terry Beardslee, who is Josiah's uncle, is none of these and therefore may not seek a writ on Josiah's behalf.

The motion to accelerate review is denied. The motion to transfer is addressed to the Supreme Court and not before the Court of Appeals for consideration. Now therefore, it is hereby,

ORDERED that the motion to modify the Commissioner's ruling is denied, it is further ORDERED that the materials requesting that this court issue a writ of habeas corpus are placed in the file without further action; and, it is further

ORDERED the appeal be dismissed without further notice or hearing if the required transcripts are not provided by August 29, 1997.

Done this 21 st day of July 1997

s/_____ Baker. CJ

s/_____ Kennedy, ACJ

s/_____ Geergton. J

THE SUPREME COURT OF WASHINGTON

IN re the Welfare of JOSIAH BEARDSLEE. TERRY R.. BEARDSLEE, et al Appellants STATE OF WASHINGTON Respondent	ORDER C/A 39742-7-1

All five members of Department I of the Court considered the matters on its October 7, 1997, Motion Calendar and unanimous agreed that the following order be entered.

IT IS ORDERED :

The Appellant's motion to modify Commissioner's ruling striking motion for discretionary review denied. Appellants' other filings are frivolous and are stricken. Further filings by the the Appellants will receive no action and incur sanctions.

DATED at Olympia, Washington this 9th day of October, 1997

s/_____ Durham C.J.

VIRGINIA:
IN CIRCUIT COURT OF THE CITY OF RICHMOND

ROCHELLE BEARDSLEE Plaintiff

v. Case no. HD-591-1

WILLIAM CLARY Defendant

On September 22, 1993, came the plaintiff, in person and by counsel, no appearance being made by the defendant, William Clary, upon the motion of the plaintiff against the defendant for his failure to return the parties' child as had been ordered by the Court on July 12, 1993.

ACCORDINGLY, IT IS HEREBY ORDERED that Rochelle Beardslee shall have custody of the parties' infant child, and that William Clary shall have visitation only at such time as he has contacted with Children and Family Services, or with some other suitable agency, to supervise his visitation with the parties' son , Josiah Beardslee-Clary. The visitation shall be supervised and shall take place on Sunday afternoons.

ENTERED: 9/27/93

s/_____
Judge: Melvin Hughes

I ask for this:
s/_____
John W. Ferrell
White, Blackburn & Conte, P.C.
300 West Main Street
Richmond, Virginia 23220-5630
(804) 782-1111

A copy teste:s/ Iva R. Pudy, Clerk

VIRGINIA:

CIRCUIT COURT OF THE CITY OF RICHMOND
the 13th day of October 19 93

RE: JOSIAH BEARDSLEE-CLARY , AN INFANT
Case No. HD-592-A1

ORDER

On October 8, 1993 came William Clary, in person, pro se, and came Rochelle Beardslee, in person and by counsel, on an order to show cause issued against Rochelle Beardslee on October 7, 1993.

Upon consideration of the evidence the Court took the matter under advisement.

Upon further consideration, the order entered on October 6, 1993, governing the terms and conditions for visitation of the minor child of the parties by William Clary shall remain in effect until the week of November 1, 1993, during which weekend of that week the child shall remain with the mother. Thereafter the father shall have visitation on alternate weekends beginning on Saturday, November 13, 1993, for the times mentioned under the court's order of October 6, 1993, during each such weekend until further order of the court.

The clerk shall mail a copy of this order to Judson Collier, esquire, counsel for Rochelle Beardslee and to William Clary, pro se.

Entered 10/13/93
s/_____
Judge Melvin Hughes

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

Rochelle Beardslee Plaintiff

v. Case no. HD-591-1

William Clary Defendant

RE: Josiah Beardslee-Clary, an Infant

ORDER

THIS DAY came the defendant, by counsel and moved the court to remove Josiah Beardslee-Clary, an infant, from the home of the custodial parent, Rochelle Beardslee.

It appearing proper to the court that the circumstances warranted temporary removal of the said Josiah Beardslee-Clary from the home of the custodial parent and placing the child in a neutral setting pending further investigation by Henrico CPS into said allegations, it is hereby

ORDERED that the said Josiah Beardslee-Clary shall be removed from the home of Rochelle Beardslee, the custodial parent, and placed in the temporary care of William and Pam Noller until further order of this court.

It is further ORDERED that either parent may visit with the supervision of Henrico CPS.

ENTERED: 11/15/93
nunc pro tunc: 11/8/93
s/_____

We ask for this: Judge Melvin Hughes
s/_____
COWAN & OWEN P.C. A copy teste: s/ Iva R. Purdy, clerk
1930 Huguenot Road
Post Office Box 35655
Richmond, Virginia 23235-0655
(804) 320-8918

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
the 13th day of October 19 93

RE: Josiah Beardslee-Clary, an infant CASE No. HD 592-A1

CHILD PICK-UP ORDER

This court finds as follows:

It has become necessary to amend and clarify custody its order of the November 15, 1993 nunc pro tunc November 8, 1993, it is hereby

ORDERED and ADJUDGED as follows:

That the custody order of this court dated November 15, 1993 nunc pro tunc November 8, 1993, is hereby amended [1] to clearly reflect the original intent of this court that the care and custody of Josiah Beardslee-Clary was to be and is with the Dept. of Social Services of Henrico, Virginia, with temporary physical placement in the home of William and Pam Noller until further order of this court.

That the sheriff of Whatcom county Washington, as agent of this court, and any other law enforcement agency having jurisdiction commanded to take into custody the following minor child and his personal belongings: Josiah Beardslee, whitle male, five years old (DOB 0/8/16/89) in the physical possession of Whatcom County Dept. of Social Services, Bellingham, Washington and immediately upon taking said minor child and his personal belongings to the jurisdiction of this court,the temporary residential custody of Henrico DSS, in the person of Phillip White, their representative, in whose custody the minor shall remain until further order of this court.

C. The sheriff and/or any law enforcement agency having jurisdiction shall serve a copy of this Order upon the mother, Rochelle S. Beardslee, who is ordered to appear before this court for a show cause hearing. If the mother is not present when the minor child is taken into custody, a copy of this order shall be served on the person in whose custody the minor is in and such shall be deemed adequate service [2] for the purpose of this Order.

It is so Ordered Entered: 5/30/95

s/_____
Judge Melvin Hughes

A copy teste: s/ Bevill Dean, clerk

[1, 2] - The proof of no notice is clear as the order is to be served after entry which for a pick-up order is common but, a modification of custody is clearly not allowed in this manner and in so doing Virginia has lost jurisdiction and the order is void requiring by Washington standards to be vacated.

SUPERIOR COURT WASHINGTON
FOR WHATCOM COUNTY

In Re the Matter of :
Josiah Beardslee
DOB 08/16/89

No. 95-7-00046-5
Order Denying Intervention
AND Dismissal of Proceeding

This matter having come before the court 5/30/95 on application of Terry R. Beardslee for an order allowing intervention; and on June 5, 1995 for further proceedings; Terry Beardslee appearing personally and through counsel, Roland Balloun: the mother of the child, Rochelle S. and through counsel, Daniel McGreevy; the state of Washington, DSHS appearing by and through Dale T.Wagner, Assistant Attorney General; and having heard arguments of counsel, now hereby makes the following order:

It is HEREBY ORDERED, ADJUDGED AND DECREED that the motion for an order allowing intervention by Terry Beardslee in the above entitled matter is denied. Terry Beardslee has no standing in any future proceedings in the above entitled matter.

Furthermore, the court finds that there is an ongoing custody proceeding and a valid order with notice to the parties in the State of Virginia related to the above child at the time of this June 1995 hearing, and therefore, this court declines jurisdiction in this matter and orders this matter dismissed.

DONE IN OPEN COURT this 4 th day of November , 1996

s/ _____, Commissioner Charles Snyder

Presented by :

CHRISTINE O. GREGOIRE
Attorney General

by s/_____
Dale T. Wagner, WSBA # 1881
Assistant Attorney General

APPROVED AS TO FORM;
NOTICE OF PRESENTATION WAIVED;

_____
Rochelle Susan Beardslee, mother of child did not appear

_____
Terry Beardslee did not appear

SUPERIOR COURT OF WASHINGTON FOR WHATCOM

In Re the Matter of:
Josiah Beardslee
DOB 08/16/89

No. 95-7-00046-5
Order On Objection
Report of the Proceedings
(Clerk's Action Required)

This matter having come before the court and the court having reviewed the records and files herein and having heard argument of counsel :

It is HEREBY ORDERED, ADJUDGED AND DECREED that the narrative report of the proceedings proffered by Rochelle Susan Beardslee and Terry Beardslee is hereby striken and the clerk of the court shall so inform the Court of Appeals of this matter. Furthermore, a verbatim [1] report of the proceedings of the May 30, 1995 and June 5, 1995 hearing, is necessary and shall be prepared by an authorized court reporter. Applicants are responsible for payment of the costs of the verbatim reports of proceedings.

---

[1] Verbatim is impossible as no court reporter was in court for the hearings also; RAP 9.5, Fact in narrative report not objected to under RAP 9.5 deemed binding. Mahoney v. Shinapoch 107 wn 2d 679, 689, 732 p2d 510 (1987); One can find no objections or amendments to the facts in the narrative reports by Washington DSHS only this order .

DONE IN OPEN COURT this 12th day of March , 1997

s/ _____, Commissioner Charles Snyder

Presented by :
CHRISTINE O. GREGOIRE
Attorney General

by s/_____ Dale T. Wagner, WSBA # 18815
Assistant Attorney General

_____
Susan Beardslee, mother of Josiah did not appear

_____
Terry Beardslee uncle Josiah did not appear[2]

---

[2] Notice of objection to Verbatim was filed timely and was before the Court on March 12, 1997

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

ROCHELLE BEARDSLEE Plaintiff

v. Case no. HD-591-1

WILLIAM CLARY Defendant

RE: Josiah Beardslee-Clary, an Infant

ORDER

This day came the following entities and / or individuals: County of Henrico Social Services by Mrs. Pullen, Foster Care Worker and George T. Elmore, Assistant County Attorney; William Clary and his attorney Stuart Williams, Jr. (Mr. Clary by his attorney was granted a non-suit of his petition for custody);

Terry Beardslee, DVM, by George Leedom, Esq, his attorney (Mr. Leedom moved and the court approved his motion for withdrawal as counsel); Susan Beardslee (mother) and Terry R. Beardslee (uncle) did not appear at this hearing.

Whereupon the court based on evidence presented and its own review of the Court's record came to the following findings of facts:

The parents appeared before this court on November 8, 1993 to answer for cross-complaints.

At the hearing, this court considered current cross complaints previous violations of visitation orders by the mother and father, upon the motion of the father to remove the child, ordered the temporary removal of the child and placed him in the care of William and Pam Noller pending a full investigation of each parent, however, the court delayed its order until November [sic] 12, 1993; Josiah was located in Washington State in May, 1995 living with his mother and uncle;

after a hearing before the Whatcom County Superior Court, case # 95-7-00046-5, Josiah was [sic] returned to Henrico DSS and placed in the home of the Noller family as previously ordered by this court. This court in ordering Henrico DSS pick up the child entered May 30, 1995 that custody of the child was intended to be placed in Henrico DSS;

Josiah has displayed aggressive, out-of-control, and inappropriate behavior towards adults and children alike; Josiah was removed from the Nollar home and placed in therapeutic foster care;

Josiah was seen by Ms. Campbell, the Richmond J&D District Court Psychologist and noted marked deterioration in the child's mental and emotional well-being, although he is very intelligent.

The father has terminated regular visitation with Josiah; nor provided any financial support for Josiah; the father has withdrawn his petition for custody.

Returning Josiah to the custody of his father would result in a

WHEREFORE, it is ORDERED, ADJUDGED AND DECREED effective September 20, 1996:

That the child remain in the custody of the Henrico DSS; that the uncle's petition for custody dismissed; that a capias for the uncle be issued for failure to appear before this court on August 20, 1996 to answer for Show Cause from the Commonwealth, that it is not in the best interest of Josiah to allow for visitation by either the mother or the uncle.

The Clerk of this Court is directed to send copies of this order to Dr. Terry R. Beardslee, P.O. Box 4770, Blaine, WA 98231; Ms. Susan Beardslee, P.O. Box 4770 Blaine WA, 98231

ENTERED: 1/29/97

s/ _____
Judge Melvin Hughes

I ask for this:
s/_____
George T. Elmore
Assistant County Attorney General
P.O. Box 27032
Richmond, VA 23273
(804) 672-4342

Seen:s/_____
s/ Stuart Williams Esq,
for William Clary
700 E. Main Street, Suite 908
Richmond, VA 23219
(804) 649-1263

This order was attached to the reply by the attorney for WA-DSHS against the Writ of Habeas Corpus in Washington State.

VIRGINIA:
THE CIRCUIT COURT OF THE CITY OF RICHMOND

Dr. Terry R. Beardslee

v.
Rochelle Beardslee Plaintiff

v. Case no. HD-591-1

William Clary Defendant

RE: Josiah Beardslee-Clary, an Infant

RULE TO SHOW CAUSE

You are hereby summoned to appear in this court on August 30, 1996, to show cause, if any you can, why you should not be held in contempt, and fined or imprisioned or both for violating the order of this court entered November 15, 1993, whereby Rochelle S. Beardslee, mother of said infant child, was ordered to turn over custody of the said infant to the Department of Social Services of Henrico County.

Entered: 6/7/96

s:/_____

Judge Melvin Hughes

SUPERIOR COURT OF WASHINGTON
FOR WHATCOM COUNTY

In Re the Dependency of Josiah Beardslee DOD 08/16/89	No. 95-7-00046-5 NOTE OBJECTION RE: RULING ENTERED NOV. 4, 1996

To: CLERK OF THE COURT
TO: Dale T. Wagner, Assistant Attorney General
TO: Susan Beardslee, natural mother of child
TO: Commissioner Charles Snyder

NOTICE OF OBJECTION

Having received on October 25, 1996 sketch for intended order to be presented on November 4, 1996; please take note of objection to the ruling denying the intervention on the behalf of Dr. Beardslee in the welfare of his nephew Josiah Beardslee-Clary, and that Dr.Beardslee does not waive the right to a rehearing on the matter nor does he wave the right to an appeal. Further, the order for intervention is a separate issue from the discretion of the Court not to take cognizance of jurisdiction and Dr. Beardslee reserves the right for independent rehearing and appeal on these matters separately.

Dated this 31 st day of October, 1996

s/_____

Terry R. Beardslee, pro se
NATURAL UNCLE
P.O. Box 4770 Blaine, WA 98231
(360) 332-8303

NORTHWEST PEDIATRICS
314 Ellis Street, Bellingham, WA 98225-1979
(360) 734-4302* 354-3277

June 2, 1995

RE: Emergency Physical Exam of Josiah Beardslee
DOB: 8/16/89
Location: Northwest Pediatrics

Witnesses: Yen Lawlor, DCFS Social worker, Mary Johnson, foster mother
Findings:
general: Josiah was an appropriate, verbal, alert 5y 9mo old boy who quickly became at ease with examiner. He displayed good eye contact, spoke freely and distinctly and demonstrated age-appropriate fund of knowledge.
Height 46 5/8", weight= 47#(60%), pulse 116/min.
Skin: Normal bruises and scrapes on under surface of forearms and shins of lower legs. Adjacent bandaid marks probably secondary abrasion.
HEENT: Lyphnodes, neck, chest, heart, abdomen, and extremity exams all unremarkable.
Spine: No scoliosis. Sacral area midline scar from surgery running 10 1/2cm to anus, pink and slightly raised from surgery running 10 1/2cm to anus with parallel row of suture marks on either side.
Findings: Rectal: Normal perianal tissue except for scar extending to posterior portion (noted above) Normal tone.
Neurological: Alert, oriented, normal mental status for age.
History from Josiah: " Big Booboo on butt isn't there anymore. I don't know how it got there. Terry (uncle) took me to two hospitals. The first didn't take it all off so Terry took me to another one.

Summary: Josiah is a healthy boy who appears to have been appropriately cared for. A congenital sacral-coccygeal area tumor was apparently removed in the past 1-2 years possibly in two stages. He displays no neurological deficits in function of the lower spine nerves to rectum. According to Josiah this surgery took place in an appropriate hospital setting.

s/: Kenneth B. Gas, MD.

FAAP.

DIVISION OF CHILDREN AND FAMILY SERVICES(DCFS)
06/06/95 imput 6/6/95 Assess ID: 00070726
CASE ID: 37D15469911 BEARDSLEE-CLARY JOSIAH STAT: C

Worker Id: 33ly13

Findings : Founded Overall Risk level : 0

I. RISK FACTORS IDENTIFIED DURING INVESTIGATION

0- No risk information
1-low risk
2-moderately low
3- moderate risk
4- moderately high
5- high risk
9- insufficient information
N- not applicable

Child Characteristics
4 age
0 Physical, Mental, or Social Development
2 Behavioral Issues
4 Self Protection
N Fear of Caretaker or home Enviroment

Severity of Child Abuse/ Neglect (CA/N)

n =extent of physical injury or harm
n= adequacy of supervision

Caretaker 1= Rochelle Beardslee Caretaker 2= Terry Beardslee
Caretaker characteristics= insufficient information (9)

Summary of CA/N:
Case Open to CPS following placement request from law enforcemewnt and Virginia, Henrico Co. Child was placed in F.C. as requested. Whatcom Co Juvenile court decided that Virginia has legal custody. Child was given to social worker and transported back to Virginia on 6/5/95 . Case closed for CPS.

Summary of Service for episodes not requested for report.
** End of Report**

COWAN & OWEN P.C. October 27, 1993

Attorneys & Counselors AT LAW
1930 Huguenot Road
Richmond, Virginia 23235-0655
AREA CODE 804
Telephone 320-8918
Telecopier 9804) 330-3140

PLEASE REPLY:
P.O. B 35655
Richmond VA 23235-0655

File No PHOOO8

October 27, 1993

Iva R. Purdy, Clerk
Richmond Circuit Court
John Mardshalkl Courts Building
800 East Marshall Street
Richmond, Virginia 23219

Re Josiah Beardslee-Clary
Case No.: HD-591-A1
Hearing Date : November 8, 1993 at 9: 00a.m.

Dear Mrs. Purdy:

Enclosed please find a Notice and Motion for Show Cause for the above-referenced matter. Pursuant to my conversation with Stephanie Connelly of your office, this will confirm that Judge Hughes has agreed to this emergency Show Cause hearing relative to visitation of the above-named minor child.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours

COWAN & OWEN, P.C.
s/_____
Phillip L. Hairston

PLH/ll
cc: William Clary
Rochelle Beardslee

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

ROCHELLE BEARDSLEE Plaintiff

v. Case no. HD-591-1

WILLIAM CLARY Defendant
RE: Josiah Beardslee-Clary, an Infant

MOTION FOR SHOW CAUSE

Defendant William Clary, by counsel, moves this Court for Show Cause against the plaintiff Rochelle Beardslee, and in support of this Motion states as follows:

1. By order of this court dated October 6, 1993, William Clary was awarded visitation every weekend Saturday at 12: 00 noon until Sunday at 6:00 p.m.

2. By further order of this court dated October 13, 1993, William Clary was awarded visitation on every weekend until Saturday November 13, 1993 at which time his visitation would change to alternate weekends.

3 That Rochelle Beardslee has failed to comply with the Order of this Court entered on October 13, 1993, in that she has failed to make the child Josiah Beardslee available for visitation with William Clary.

WHEREFORE, the defendant William Clary, by counsel, requests that this court find Rochelle Beardslee in contempt of the October 13, 1993, and further requests that this Court Order that Rochelle Beardslee comply with the visitation Order. The defendant further requests that appropriate sanctions be institutes against Rochelle Beardslee, including costs and attorney's fees.

WILLIAM CLARY
by s/: Phillip Hairston of Counsel

COWAN & OWEN P.C.
1930 Huguenot Road
Post Office Box 35655
Richmond, Virginia 23235-0655
(804) 320-8918

CERTIFICATE

I certify that on this 27 th day of October , 1993 , a true and correct copy of the foregoing Motion for show cause was mailed by first-class mail postage pre-paid to Ms. Rochelle Beardslee, [1] 308 Newbridge Road, #116 Richmond, Virginia 23223.

s/_____
Phillip L. Hairston

---

1 Notice and service improper making any order void proof : see the October 13, 1993 order, app 5a. The issue is contempt for an order going into effect November 1, yet this motion is written on October 27th 1993 served not to counsel also supported by the October 13, 1993 order.

UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.